

MANDATE

N.D.N.Y.
00-cv-1698
Kahn, J.

United States Court of Appeals FOR THE SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 8th day of March, two thousand twenty-one.

Present:

Pierre N. Leval,
Gerard E. Lynch,
Joseph F. Bianco,
Circuit Judges.

Detroyn Livingston,
Petitioner,

v.
Victor Herbert,

Respondent.

Petitioner moves for leave to file a successive 28 U.S.C. § 2254 petition. Upon due consideration, it is hereby ORDERED that the motion is DENIED.

To the extent Petitioner repeats any claim that he raised in his prior § 2254 petition, it must be dismissed under 28 U.S.C. § 2244(b)(1) (“A claim presented in a second or successive habeas corpus application under section 2254 that was presented in a prior application shall be dismissed.”).

However, even if all of Petitioner’s claims are considered new, he has not made a *prima facie* showing that the requirements of § 2244(b)(2) are satisfied. Specifically, Petitioner has not made a showing that his claims are based on “a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable” or newly discovered evidence that, when “viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found [him] guilty of the underlying offense.” 28 U.S.C. § 2244(b)(2)(A)–(B).

A True Copy

Catherine O’Hagan Wolfe, Clerk

United States Court of Appeals, Second Circuit


Catherine O'Hagan Wolfe

FOR THE COURT:

Catherine O’Hagan Wolfe, Clerk of Court


Catherine O'Hagan Wolfe